

**DURHAM, NORTH CAROLINA
MONDAY, OCTOBER 4, 2004
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Excused Absence: Council Member Clement.

Also present: Interim City Manager Patrick Baker, Assistant City Attorney Karen Sindelar, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the Pledge of Allegiance led by Council Member Best.

SUBJECT: EXCUSED ABSENCE – COUNCIL MEMBER CLEMENT

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to excuse Council Member Clement from the meeting was approved at 7:00 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Mayor Bell announced in observance of National Disability Employment Awareness Month, Durham Parks and Recreation produced a 30 second commercial that will air every weekend in October on News Channel 14 with the theme--“Success Knows No limits”.

Also, the Mayor read proclamations proclaiming October as Disability Awareness Month; October 16 as Durham Homeownership Expo 2004 Day; October as Domestic Violence Awareness Month; and September 27 – October 1, 2004 as Money Wise Week.

Finally, the Mayor noted the slides represent the beautification projects completed by the Executive Leadership Institute.

The Mayor asked for priority items from the City Manager, City Attorney and City Clerk.

Relative to GBA #28 [Rezoning Case P03-55 Technology Park North, Interim City Manager Baker noted the applicant requested that their application be withdrawn. Also, he recognized Solid Waste Manager Al Davis who thanked five employees of his department for finding a citizen’s purse along with her identification, credit cards and money that had been thrown in the trash and collected.

There were no priority items from the City Attorney.

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MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to accept the City Manager's priority items was approved at 7:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

There were no priority items from the City Clerk.

Council Member Catotti congratulated the Campaign for Decent Housing of the Durham Affordable Housing Coalition for a successful rally held this past Saturday and the YMCA of the Triangle for re-examining their rate structure and making their fees equitable for everyone in this community.

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Consent Agenda Items 1 [607 Canal Street Performance Review], 17 [Cell Tower Lease to SprintCom – 1318 E. Pettigrew Street], 18 [Sub-recipient Agreement – the Ivy Community Center, Inc.] and 24 [Landscape Architectural Services for Northgate Park Improvements] were pulled.

MOTION by Council Member Best seconded by Council Member Catotti to approve the Consent Agenda as amended was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

[CONSENT AGENDA]

SUBJECT: APPROVAL OF CITY COUNCIL MINUTES

MOTION by Council Member Best seconded by Council Member Catotti to approve City Council minutes for the following meetings was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

August 25, 2004 - Special
September 7, 2004 - Regular
September 7, 2004 - Special

SUBJECT: WORKFORCE DEVELOPMENT BOARD – RECEIPT AND ACCEPTANCE OF APPLICATIONS AND REAPPOINTMENTS

MOTION by Council Member Best seconded by Council Member Catotti to receive and accept applications and to reappoint five (5) citizens as recommended by the Greater

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Durham Chamber of Commerce to the Workforce Development Board-- terms will expire June 30, 2006; and

Private Sector

Cimorelli, Don	(WM)
Cox, Billie	(WF)
Massenburg-Beasley, Glyndola	(BF)
Mistretta, John	(WM)
Smith, Steve	(WM)

To receive and accept applications and to reappoint citizens as supported by the Workforce Development Board to fill three (3) vacancies--terms will expire June 30, 2006 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Community Based Organizations

Moore, Tim	(WM)
White, Tom	(WM)

One Stop Partner

Kathy Elliott	(WF)
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SUBJECT: HISTORIC PRESERVATION COMMISSION – APPOINTMENTS

MOTION by Council Member Best seconded by Council Member Catotti to reappoint Beth K. Mulvaney (At-Large Member) to represent Historian and Diane L. Oxley (Regular Member) to represent Developer/Builder to the Historic Preservation Commission with terms expiring on September 1, 2007 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: DURHAM BICYCLE & PEDESTRIAN ADVISORY COMMISSION - APPOINTMENTS

MOTION by Council Member Best seconded by Council Member Catotti to reappoint Peter J. Schubert and Michael S. Wolosin to the Durham Bicycle & Pedestrian Advisory Commission with terms to expire on August 31, 2007 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

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SUBJECT: DURHAM AREA TRANSIT AUTHORITY - APPOINTMENT

MOTION by Council Member Best seconded by Council Member Catotti to appoint Christopher Harder as an Alternate Member on the Durham Area Transit Authority with a term expiring March 1, 2007 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: CITIZENS ADVISORY COMMITTEE - APPOINTMENTS

MOTION by Council Member Best seconded by Council Member Catotti to appoint Kelly Paylor, Angelique Stallings and Arcenia Wiggins-Owens to the Citizens Advisory Committee with terms expiring on June 30, 2005 and June 30, 2006 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: CONTRACTS

MOTION by Council Member Best seconded by Council Member Catotti to authorize the City Manager to execute contracts on the list; and

To authorize the City Manager to make changes to the contracts on the list before execution as long as the changes do not increase the dollar amount and remain consistent with the general intent of the contracts was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Contractor	Contract Description	Dept	CT Amount
Pinnacle Productions	Music for Octoberfest	OEED	\$7,500.00
Durham Cinematheque	Outdoor Movies in Downtown	OEED	\$750.00
Mallarme	Music for Read-A-Thon	OEED	\$400.00
S&ME	Subsurface Exploration & addendum for Durham Station - On Call Service	Gen Ser	\$29,971.00
Roughton, Nicholson, De Luca	Architectural design for renovation to Police Dept.-On Call Service	Gen Ser	\$7,000.00
Jani-King	Contract Extension-Janitorial Service for Communication Maintenance	Finance	\$12,240.00

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Jani-King	Contract Extension-Janitorial Service for Fleet Maintenance	Finance	\$14,928.00
Tarheel Lawn & Bldg. Maintenance	Contract Extension-Janitorial Service-Water Management Adm. Building	Finance	\$16,715.04
Quality Janitor Service	Contract Extension-Janitorial Service-South Durham WRF	Finance	\$11,000.76
John Avery Boys & Girls Club	Hayti Weed & Seed Community Step Team	Housing	\$6,750.00
Milton Tabron	Baseball Official	P&R	\$2,500.00
Don Aikins	Tennis Instructor	P&R	\$560.00

SUBJECT: MAJOR SITE PLAN FOR FAYETTEVILLE ROAD MEDICAL OFFICE – (D04-205)

MOTION by Council Member Best seconded by Council Member Catotti to approve a major site plan for “Fayetteville Road Medical Office”, submitted by Mitchell Westendorf, P.A. on behalf of Greystone Development, LLC, for an 11,939 square foot medical office building on a 1.317 acre site zoned OI-2 and F/J-B, located on the west side of Fayetteville Road, north of N.C. Hwy. 54 and south of Woodcroft Parkway, PIN 0729-03-10-2635, City Atlas Page 43, Block A-3 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: STREET CLOSING (SC04-15)– SET HEARING ON THE CLOSING OF 196.52 LINEAR FEET OF VANDORA DRIVE, SOUTH OF STONEGATE DRIVE AND EAST OF RANDOLPH ROAD

MOTION by Council Member Best seconded by Council Member Catotti to adopt a resolution to set a public hearing on the proposed closing of 196.52 linear feet of Vandora Drive, south of Stonegate Drive and east of Randolph Road for October 18, 2004 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Resolution #9154

SUBJECT: STREET CLOSING (SC04-13)– SET HEARING ON THE CLOSING OF A 350 LINEAR FOOT PORTION OF KEATS AVENUE AT

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**THE EASTERN END, EAST OF BRIGGS AVENUE AND SOUTH
OF E. MAIN STREET**

MOTION by Council Member Best seconded by Council Member Catotti to adopt a resolution to set a public hearing on the proposed closing of a 350 linear foot portion of Keats Avenue at the eastern end, east of Briggs Avenue and south of E. Main Street for October 18, 2004 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Resolution #9155

**SUBJECT: STREET CLOSING (SC04-11)– SET HEARING ON THE CLOSING
OF A 392.67 LINEAR FOOT PORTION OF BRANT STREET,
WEST OF FAYETTEVILLE STREET AND EAST OF CONCORD
STREET**

MOTION by Council Member Best seconded by Council Member Catotti to adopt a resolution to set a public hearing on the proposed closing of a 392.67 linear foot portion of Brant Street, west of Fayetteville Street and east of Concord Street for October 18, 2004 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Resolution #9156

**SUBJECT: NATIONAL REGISTER NOMINATION STATEMENT FOR EAST
DURHAM HISTORIC DISTRICT**

MOTION by Council Member Best seconded by Council Member Catotti to adopt a resolution to authorize the Mayor to sign a statement of support for the nomination of the East Durham Historic District to the National Register of Historic Places was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Resolution #9157

**SUBJECT: WATER AND SEWER EXTENSION AGREEMENT WITH AEGIS
GIBSON, LLC - VESTAVIA HILLS SUBDIVISION**

MOTION by Council Member Best seconded by Council Member Catotti to authorize the City Manager to enter into a Water and Sewer Extension Agreement with Aegis

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Gibson, LLC to serve Vestavia Hills Subdivision, Tax Map 718-01-021,021A; PIN # 0852-01-17-3161, -7333 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: CONTRACT AMENDMENT FOR SOFTRESOURCES, LLC

MOTION by Council Member Best seconded by Council Member Catotti to authorize the Interim City Manager to amend the current contract with SoftResources, LLC, for an additional \$10,000, for a total not to exceed amount of \$110,000 to provide software selection services for the City of Durham through December 2004; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: PROPOSED SALE OF CITY TRACT # 1918 (PARCEL ID # 103335 & 103339), 300-303 S. DUKE STREET – TRIANGLE TRANSIT AUTHORITY

MOTION by Council Member Best seconded by Council Member Catotti to accept the offer of \$116,500 from TTA to purchase City Tract # 1918 plus a relocation benefit of \$1,700 under the authority of G.S. 160A-274; and

To authorize the City Manager to sell the property and the Mayor to convey the property with a non-warranty deed was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: SUB-RECIPIENT AGREEMENT – HOUSING FOR NEW HOPE PHOENIX HOUSE

MOTION by Council Member Best seconded by Council Member Catotti to authorize the expenditure of CDBG funds in an amount not to exceed \$34,000; and

To authorize the City Manager to execute a sub-recipient agreement with Housing for New Hope to conduct case management services, substance abuse counseling, and residential management services, to assist low- moderate-income homeless Durham men earning less than 80% of the area median income; and

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To authorize the City Manager to modify the agreement before execution provided that the modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: COOPERATION AGREEMENT- CALVERT PLACE – DURHAM HOUSING AUTHORITY

MOTION by Council Member Best seconded by Council Member Catotti to authorize the City Manager to execute an interlocal cooperation agreement with the Housing Authority to establish tax payment, PILOT payments, and City service provisions for the proposed Calvert Place development; and

To authorize the City Manager to modify the agreement before execution provided that the modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of agreement was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: COOPERATION AGREEMENT – MORNING GLORY SENIOR VILLAGE – DURHAM HOUSING AUTHORITY

MOTION by Council Member Best seconded by Council Member Catotti to authorize the City Manager to execute an interlocal cooperation agreement with the Housing Authority to establish tax payments, PILOT payments, and City service provisions for the proposed Morning Glory Senior Village development; and

To authorize the City Manager to modify the agreement before execution provided that the modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of agreement was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: AMENDMENT TO TRASH AND UNDERGROWTH ORDINANCE

MOTION by Council Member Best seconded by Council Member Catotti to adopt an ordinance amending the proposed amendment to the portions of the 'Removal of Trash and Undergrowth from Property' Ordinance found in Article VI., Chapter 10 of the City Code was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro

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Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Ordinance #13008

SUBJECT: FIRST AMENDMENT TO THE INTERLOCAL COOPERATION AGREEMENT REGARDING MEMBERSHIP OF THE DURHAM CONVENTION AND VISITORS BUREAU

MOTION by Council Member Best seconded by Council Member Catotti to authorize the City Manager to execute the First Amendment to the Interlocal Cooperation Agreement Regarding Membership of the Durham Convention and Visitors Bureau; and

To authorize the City Manager to modify the agreement before execution provided that the modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of agreement was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: MUNICIPAL AGREEMENTS FOR WORK PERFORMED ON STATE HIGHWAY SYSTEM STREETS - NCDOT

MOTION by Council Member Best seconded by Council Member Catotti to adopt resolutions authorizing the City Manager to enter into Agreements with NCDOT: Schedule "A" – Signs as amended; Schedule "B" – Markings and Markers as amended; Schedule "C" – Traffic Signals; and Schedule "D" – Computer, Communications Equipment, and System Operations for Computerized Traffic Signal System; and

To authorize the City Manager to modify the agreements as amended before execution provided that the modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of agreement was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Resolution #9158

Resolution #9159

Resolution #9160

Resolution #9161

SUBJECT: EXECUTIVE LEADERSHIP INSTITUTE PROJECT REPORT

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MOTION by Council Member Best seconded by Council Member Catotti to receive a presentation from the Executive Leadership Institute participants concerning City beautification projects was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: PRINCESS GIBSON

To receive comments from Princess Gibson regarding the harassment from the Fraternal Order of Police.

Note: This item was referred to the October 7, 2004 Work Session.

SUBJECT: BOB NOVAK

MOTION by Council Member Best seconded by Council Member Catotti to receive comments from Bob Novak on a parking violation and the appeal process; Fayetteville Street potholes; Durham One Call Center and private street issues was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: THE VILLAGES OF CORNWALLIS

To receive comments from Brenda Howerton concerning rezoning property on Cornwallis Road.

Note: Comments were received at the 9/23/04 Work Session and this item was referred to the October 7, 2004 Work Session

SUBJECT: USA OLYMPIC BASEBALL TEAM OFFICES AND WATERPROOFING AT THE DURHAM BULLS ATHLETIC PARK – USA BASEBALL – L.A. DOWNEY & SON, INC.

To authorize the City Manager to execute the lease agreement between the City of Durham and USA Baseball; and

To authorize the City Manager to enter into a contract with L.A. Downey & Son, Inc., for the amount of \$326,890; establish a contingency of \$32,689 for a total of \$359,579; and

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To authorize the City Manager or his designee to negotiate and execute change orders to the contract for construction provided the total cost of all change orders does not exceed \$32,689 and the total cost of the project does not exceed \$359,579; and

To authorize the City Manager to modify the agreement and the contract before execution provided that the modifications do not increase the dollar amount of either agreements and the modifications are consistent with the general intent of the existing version of the agreements.

Note: This item was approved at the 9/23/04 Work Session with a vote of 6/1.

SUBJECT: PROPOSED CONDEMNATION OF PROPERTY FOR TURN Lanes ON HIGHWAY 98; GANYARD FARM, LLC

To adopt a "Resolution Authorizing Condemnation of Property for the Highway 98 Turn-lane Project"; and

To authorize Ganyard Farm, LLC to settle the condemnation action(s) by payment from its funds of whatever additional sum(s) that Ganyard Farm, LLC finds to be satisfactory on terms and conditions acceptable to Ganyard Farm, LLC and the City Manager in consultation with the City Attorney, provided all monies are paid by Ganyard Farm, LLC; and

To authorize the City Manager to execute the Agreement between Ganyard Farm, LLC and the City of Durham on Payment of Eminent Domain Expenses; and

To authorize the City Manager to modify the agreement before execution provided that the modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement.

Note: This item was referred to the October 7, 2004 Work Session.

SUBJECT: UPDATE ON THE REDEVELOPMENT OF BARNES AVENUE AREA

To receive an Update on the Redevelopment of Barnes Avenue Area.

Note: This item was referred to the October 7, 2004 Work Session.

SUBJECT: FUNDING FOR CITY MANAGER SEARCH

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To adopt a “Resolution by the City Council of the City of Durham Authorizing the Charge of \$34,150 to the Contingency Account of the General Fund”.

Note: This item was approved at the 9/23/04 Work Session with a vote of 6/1. Resolution #9153

SUBJECT: POLICE ROTATION WRECKER DISPATCH FEE REDUCTION

To adopt a “Resolution Amending Wrecker Dispatch Fee”.

Note: This item was referred to the October 7, 2004 Work Session.

[GENERAL BUSINESS AGENDA]

SUBJECT: DURHAM POLICE DEPARTMENT CRIME REPORT JANUARY 2004 THROUGH JUNE 2004

To receive a presentation on the Crime Report for January 2004 through June 2004.

Police Chief Steve Chalmers gave a power point presentation on the crime report for January through June 2004. He gave an overview of the sworn/non-sworn staffing; clearance rate comparisons; all index violent crimes--homicide, rape, robbery, aggravated assault; all property crimes—burglary, larceny, motor vehicle theft; all index crimes; and mobile substation deployment.

Mayor Pro Tempore Cole-McFadden requested a chart on violent crimes by district.

Mayor Bell commented on the mobile substation being deployed more than four hours a day.

Council held discussion on mobile substation deployment, staffing, gang units, crime comparison of other cities, and Citizens Observer Patrol.

Victoria Peterson expressed concern with the crime in the area, requested Part II statistics and noted she will bring crime information to the October 21, 2004 Work Session from the Sheriff, North Carolina Central University, Duke University and private law enforcement firms. Also, she stated the City needs a commissioner.

Anita Keith-Foust asked the Chief to add proactive points to the next crime report, requested an appointment with the City Manager and Police Chief regarding children being approached in a sexual manner by adults and noted the Police Chief should receive input from Economic Development and other departments.

Note: No action was taken on this item.

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[GENERAL BUSINESS AGENDA – PUBLIC HEARINGS]

SUBJECT: PUBLIC HEARING AND AGREEMENT BETWEEN HEALING WITH CAARE, INC. AND THE CITY OF DURHAM REGARDING INVESTMENT AND JOB CREATION INCENTIVES IN A COMMUNITY DEVELOPMENT AREA

Trisha Gensic, of Economic Development, made comments on this item.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor declared the public hearing closed.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to receive public comments on the provision of incentives to Healing with CAARE, Inc; and

To authorize the City Manager to enter into a contract with Healing with CAARE, Inc. to provide a maximum reimbursement of \$40,000 under the Economic Development Investment Incentive Policy; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 8:19 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: REZONING MATTER CASE P03-55 – TECHNOLOGY PARK NORTH – PORTRAIT HOMES CONSTRUCTION COMPANY – NORTHWEST CORNER OF THE INTERSECTION OF PAGE ROAD AND T. W. ALEXANDER DRIVE

To receive public comment on rezoning Case P03-55 (Technology Park North); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P03-55 out of I-1, I-2 and placing same in and establishing same as PDR 6.76.

Planning Department Recommendation: Denial

Zoning Committee Recommendation and Vote: Denial - (6-1)

City/County Planning Director Frank Duke noted the applicant requested that this item be withdrawn.

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MOTION by Council Member Stith seconded by Council Member Best to withdraw this rezoning request was approved at 8:20 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: STREET CLOSING (SC04-06) - A 197 LINEAR FOOT PORTION OF BLACKWELL STREET – G. EDWIN BELK/BELK ARCHITECTURE

City/County Planning Director Frank Duke briefed Council on the staff report.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor declared the public hearing closed.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Best to receive public comments; and

To adopt an order permanently closing a 197 linear foot portion of Blackwell Street was approved at 8:22 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Ordinance #13009

SUBJECT: STREET CLOSING (SC04-07) - A 248.13 LINEAR FOOT PORTION OF GEORGE STREET, LOCATED NORTH OF CHEEK ROAD AND EAST OF ROANE STREET – SHERMAN ALSTON

City/County Planning Director Frank Duke briefed Council on the staff report.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor declared the public hearing closed.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to receive public comments; and

To adopt an order permanently closing a 248.13 linear foot portion of George Street, located north of Cheek Road and east of Roane Street was approved at 8:23 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

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Ordinance #13010

**SUBJECT: STREET CLOSING (SC04-05) - A 399.91 LINEAR FOOT
PORTION OF AN UNNAMED ALLEY SOUTH OF GREEN
STREET AND EAST OF NINTH STREET – DICKSON FAMILY
LIMITED PARTNERSHIP**

City/County Planning Director Frank Duke briefed Council on the staff report.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor declared the public hearing closed.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to receive public comments; and

To adopt an order permanently closing a 399.91 linear foot portion of an unnamed alley south of Green Street and east of Ninth Street was approved at 8:24 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Ordinance #13011

**SUBJECT: MAJOR SPECIAL USE PERMIT (M04-02) – TIME WARNER
CABLE – 924 ELLIS ROAD, NORTH OF THE INTERSECTION
OF ELLIS ROAD AND GLOVER ROAD**

To hold a quasi-judicial public hearing to consider a Major Special Use Permit for the replacement of an existing 345'guyed broadcast tower with a 318' freestanding broadcast tower; and

To direct the Planning Director to prepare an Order for adoption, for 1) approval 2) approval with conditions or 3) denial, or to continue this hearing to a specified later meeting. (A draft order for approval with staff recommended conditions will be available at the meeting)

City Clerk D. Ann Gray swore in the following individuals: Frank Duke, Michael Stock, Eric Braun, Ryan Hussey, Jamie Loyack, Cliff Credle, Jarvis Martin, Tim Warner and Bob Pruitt.

Mayor Bell explained the proceedings for a major special use permit.

The Mayor asked Council to reveal any possible conflicts and to withdraw from this hearing if necessary. Also, Mayor Bell asked if any Council Member had been exposed to

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any evidence or information that may not come out at the hearing tonight.

Mayor Bell asked the attorney for the applicant and for opponents or a representative to identify themselves.

Eric Braun identified himself as representing the applicant.

Mayor Bell opened the public hearing.

Testimony from Staff

Michael Stock, of the City/County Planning Department, requested that the staff report and all attachments and exhibits be entered as a part of the permanent record. He noted Hagersmith Design, PA, on behalf of Time Warner Cable, proposes the construction of a 318' broadcast antennae tower to replace the existing 345' tower on the same site. The replacement tower will be located approximately 200' away from the existing Time Warner Cable business building, site of the existing tower, and will be accompanied by a 600 square foot equipment building. Broadcast antennae are required to obtain a Major Special Use Permit within the I-2 district, and to meet the supplementary requirements of Section 7.8 of the Zoning Ordinance. The site plan was recommended for approval by the Development Review Board on August 20, 2004.

Mr. Stock noted Council must make findings of fact under Section 13.2.3 of the Durham Zoning Ordinance, that the proposed use is: 1) In harmony with the area and not substantially injurious to the value of properties in the general vicinity; 2) In conformance with all special requirements applicable to the use and in conformance with the Supplementary Requirements Section of this Ordinance; and 3) Will not adversely affect the health or safety of the public. He stated Council shall also give consideration to items 1-10 under section 13.2.4 as indicated in the staff report and Council may impose conditions on the permit request that the Council deems necessary to ensure that this project is compatible and in harmony with the surrounding neighborhood. Additionally, he stated staff will provide a recommendation to the Council at the conclusion of testimony for this case.

The Mayor asked if there were questions for staff. There were no questions.

Testimony from Applicant

Eric Braun, representing the applicant, provided the City Attorney with an Illustrative Development Plan.

Assistant City Attorney Karen Sindelar marked the information provided by the applicant as Exhibit A.

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Ryan Hussey, representing the applicant, gave an overview of the project. He noted the replacement tower will enhance Time Warner's high speed cable and digital phone services.

The Mayor asked if there were questions for the applicant. There were no questions.

Jarvis Martin, representing the applicant, noted the replacement tower will not have any adverse effect on the surrounding property. Also, he provided the City Attorney with information on the Market Research Residential Sales & General Development Near Towers (Cell, Radios & TV).

The Mayor asked if there were questions for the applicant. There were no questions.

Assistant City Attorney Sindelar marked the information provided by the applicant as Exhibit B.

Jamie Loyack, representing the applicant, noted this request is consistent with the City of Durham's Draft Future Durham Land Use Map and South Central Durham Area Plan. He made comments on the set-back, height and elevation of replacement tower. He noted the tower compound building will be screened from all adjacent property owners, there will be an undistributed buffer and the applicant is not proposing any vehicle circulation on the site.

The Mayor asked if there were questions for the applicant. There were no questions.

Cliff Credle, representing the applicant, discussed the safety aspects of the replacement tower.

The Mayor asked if there were questions for the applicant. There were no questions.

Eric Braun, representing the applicant, noted adjacent property owners were contacted by letter and have not heard of any objection to this project. Also, he requested that all documents submitted tonight including the application and supporting materials be included as evidence, made comments on the conditional site plan obtained by the applicant and urged Council to approve the Major Special Use Permit.

No one spoke in opposition to this major special use permit.

Mayor Bell declared the public hearing closed.

Staff Recommendation

Michael Stock, of the City/County Planning Department, noted based upon the technical requirements of the Durham Zoning Ordinance, staff recommends approval subject to the following condition: The project shall be completed in accordance with the approved site plan, including any additional corrections and verifications. He noted Council may

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approve the order to grant a use permit for a 318' replacement tower tonight if no additional conditions are placed upon the permit.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Stith to adopt an order granting, upon certain conditions, a Major Special Use Permit for Time Warner Broadcast Antennae Case M04-02 was approved at 8:45 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

Ordinance #13012

[ITEMS PULLED FROM CONSENT AGENDA]

SUBJECT: 607 CANAL STREET PERFORMANCE REVIEW (JUNE 2004)

Council Member Best made comments on the audit and outlined suggestions for the Housing Department to make regarding future loans. He urged staff to make sure there is no conflict of interest involved with parties before moving forward with the application, to follow policies and procedures and to provide Council with all the correct information.

Mayor Pro Tempore Cole-McFadden thanked the Housing Department for all the initiatives that have been put in place under the leadership of Constance Stancil.

Council Member Brown made comments on the audit.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to receive and accept the 607 Canal Street Performance Review (June 2004) as approved at the August 28, 2004 ASOC meeting was approved at 8:53 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: CELL TOWER LEASE - SPRINTCOM, INC. - WATER TANK AT 1318 E. PETTIGREW STREET

Council Member Stith made comments on the lease rates.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute the Water Tower Lease and License Agreement for a cell tower with SprintCom, Inc.; and

To modify the agreement before execution provided that the modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement was approved at 8:54 p.m. by the

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following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: SUB-RECIPIENT AGREEMENT – THE IVY COMMUNITY CENTER, INC.

Victoria Peterson asked for clarification on the process for approving CDBG projects.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the expenditure of CDBG funds in an amount not to exceed \$25,000; and

To execute a sub-recipient agreement with The Ivy Community Center, Inc. to conduct Child Care/After School Care and Educational Programs to children of low- moderate-income Durham residents; and

To modify the agreement before execution provided that the modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement was approved at 9:00 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Noes: None. Excused Absence: Council Member Clement.

SUBJECT: AGREEMENT FOR LANDSCAPE ARCHITECTURAL SERVICES FOR NORTHGATE PARK IMPROVEMENTS – CLINE DESIGN ASSOCIATES, P.A.

Victoria Peterson expressed concern that the contract is not with a Durham firm and asked who bided on this item.

Tanner Weeks, of the Parks & Recreation Department, made comments on the request for qualifications and noted staff will provide information on who bided on the project.

Mayor Bell asked staff why a request for qualifications was prepared instead of request for proposals.

Assistant City Manager Laisure noted to make a selection for a design professional you ask for a request for qualifications.

A motion was made by Council Member Stith to defer this item to the October 7, 2004 Work Session. Motion dies for a lack of a second.

MOTION by Council Member Best seconded by Council Member Catotti to authorize the City Manager to enter into the Agreement for Landscape Architectural Services for

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Northgate Park Improvements with Cline Design Associates, P.A. for master plan development and construction documents for Northgate Park for the Sum of \$64,655 with a \$6,465 contingency; and

To authorize the City Manager to negotiate and execute change orders provided the total compensation does not exceed \$71,120; and

To authorize the City Manager to make changes to the contract before executing it if the changes do not increase the compensation to be paid by the City and do not decrease the goods and services to be provided to the City was approved at 9:10 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown and Catotti. Noes: Council Member Stith. Excused Absence: Council Member Clement.

There being no further business to come before the City Council, the meeting was adjourned at 9:10 p.m.

Linda E. Bratcher
Deputy City Clerk

D. Ann Gray, CMC
City Clerk